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July 20, 2012

By ECF

Hon. Sandra L. Townes
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Eurohypo AG v. Travelers Property Casualty Company of America, No. 12-cv-372-SLT-CLP*

Dear Judge Townes:

We represent plaintiff Eurohypo AG, New York Branch, as Administrative Agent ("Eurohypo") in the above-referenced action. We write to seek leave of the Court to file a motion for partial summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, dismissing the eighth defense and part of the sixth defense raised by Travelers Property Casualty Company of America ("Travelers") in its Answer to Eurohypo's Complaint in this action. The motion will address one of the key issues in the case -- the availability of insurance coverage for Eurohypo's claimed "soft costs." The Court's ruling will greatly assist the parties in preparing for and conducting discovery efficiently, and also will promote the early resolution of this dispute through settlement. Eurohypo's soft costs claim accounts for most of the damages claimed in this case.

By way of background, Travelers sold an insurance policy to C.E. Flushing, LLC ("Flushing"), policy number QT-660-4274B945-TIL-09 (the "Policy"), to protect against the risk of loss associated with the construction of Flushing Town Center.¹ The financing for the construction of Flushing Town Center, a mixed commercial and retail project in Flushing, Queens, required a nearly half-billion dollar loan from a group of fourteen lenders (collectively, the "Mortgagees"). Eurohypo was both a Mortgagee and the Administrative Agent for the Mortgagees. Following a storm that caused property damage and construction delays, Eurohypo sought insurance

¹ A copy of the Policy is attached to Eurohypo's Complaint at Dkt. No. 1 and also to the accompanying Rule 56.1 Statement as Exhibit 2.

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coverage from Travelers, on behalf of the Mortgagees, for the resulting property damage and other losses.

Travelers, under the Policy, agreed to provide "Soft Costs" coverage. See Policy, EUR000019, ¶ 3.a. Soft Costs are defined in the Policy as the "actual and necessary business costs in excess of your budgeted amount for the 'project' consisting only of the type shown in the Declarations." See *id.*, EUR000036, ¶ 29. The Declarations describe Soft Costs to include: (1) interest on money borrowed to finance construction; (2) advertising expenses; (3) realty taxes; and (4) other costs resulting from the renegotiation of the lease(s) or construction loans. See *id.*, EUR000011.

Travelers, as and for an Eighth Defense, argues that the Mortgagees are not entitled to Soft Costs coverage because the Policy only provides such coverage to the Named Insured. In paragraph 66 of its Answer, Travelers further contends (as part of its Sixth Defense) that the Mortgagees are not entitled to soft costs because the Mortgage Endorsement relates only to "loss" to "buildings or structures."

The issues set forth in this letter are pure issues of law that do not require additional discovery for resolution. (In accordance with Your Honor's Individual Motion Practice & Rules, Eurohypo's Local Civil Rule 56.1 statement is attached hereto as Exhibit A.) There is no reason why discovery on other issues should not proceed while these issues are briefed by the parties and resolved by the Court.

We have conferred with counsel for Travelers and were informed this morning that Travelers is still considering whether it will consent to this application.

Accordingly, and pursuant to Your Honor's Individual Motion Practice & Rules, Eurohypo respectfully requests a pre-motion conference with the Court to further discuss Eurohypo's application for leave to file a motion for partial summary judgment. Your Honor has previously scheduled a pre-motion conference in a related matter styled *C.E. Flushing, LLC v. Travelers Property Casualty Company of America*, Case No. 1:11-cv-03477-SLT-CLP, for August 9, 2012 at 10:00 a.m. If it is convenient for Your Honor, we would be happy to appear for Eurohypo's requested pre-motion conference at that time.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ Finley Harckham

Finley Harckham

cc: Stephen M. Lazare, Esq. (by email)